



## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 90

[212A2100DD / AAKC001030 / A0A501010.999900]

RIN 1076-AF58

#### Election of Officers of the Osage Minerals Council

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

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**SUMMARY:** The Bureau of Indian Affairs (BIA) is finalizing revisions to its regulations governing elections of the Osage Nation. These revisions update and limit the Secretary's role to the task of compiling a list of voters for Osage Minerals Council elections. These changes reaffirm the inherent sovereign rights of the Osage Nation to determine its membership and form of government.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, telephone (202) 273-4680, [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

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## **I. Statutory Authority**

BIA is finalizing this rule under the authority of the Act of June 28, 1906, Public Law 59-321, 34 Stat. 539, as amended by the Act of December 3, 2004, Public Law 108-431, 118 Stat. 2609.

## **II. History of the Rule**

The Department of the Interior provided testimony in support of the legislation proposed by the Osage Nation when the Nation sought to exercise its inherent sovereign rights. Thereafter, the United States Congress reaffirmed in 2004 the Nation's rights to determine its membership and form of government. The following discussion sets forth a brief historical account of the relationship between the Osage Nation and the Federal government.

In 1906, the Congress enacted the Osage Allotment Act, which is unique among Federal Indian laws in that it restricted the Osage Nation from defining its own membership rules, and prescribes a particular form of government, which the Nation could not change without seeking amendment or clarification of Federal law. In 2002, the 31st Osage Tribal Council, formed pursuant to the Osage Allotment Act, actively began seeking a legislative remedy to address the restrictions contained in the Osage Allotment Act.

On July 25, 2003, Congressman Frank Lucas (R-OK) introduced H.R. 2912, a bill reaffirming the rights of the Osage Nation to form its own membership rules and tribal government, provided that no rights to any shares in the mineral estate of the Nation's reservation are diminished. The bill also directs the Secretary of the Interior to assist the Nation in holding appropriate elections and referenda at the request of the Nation.

H.R. 2912 was referred to the Committee on Resources. On March 15, 2004, that Committee held a hearing on the bill in Tulsa, Oklahoma. Osage Nation officials, a BIA representative, and Osage people testified in favor of the bill. On May 5, 2004, the bill was favorably reported to the House of Representatives by unanimous consent. See H. Rpt. 108-502. On June 1, 2004, the House of Representatives passed the bill and then sent it to the Senate, and it was referred to the Committee on Indian Affairs.

On July 14, 2004, the Committee on Indian Affairs favorably reported H.R. 2912 to the Senate with a “do pass” recommendation. President Bush signed H.R. 2912 into law on December 3, 2004, and became Public Law 108-431, 118 Stat. 2609.

The Commission began conducting town hall meetings in April 2005. Meetings were conducted in all Osage communities and other geographic areas with large concentrations of Osages. This was followed by a written survey mailed to all Osages with a Certificate of Degree of Indian Blood (CDIB) card. Input from the meetings and data obtained from the survey results were compiled to formulate key questions put forward to the Osage people for a vote in a referendum in November 2005.

The results from the referendum were used to draft an Osage Constitution, which was ratified on March 11, 2006, in a second referendum vote. The Osage Nation adopted a new constitutional form of government reorganized from a Tribal Council system into a tripartite system, which now includes an executive, legislative and judicial branch with a separation of powers between the three branches.

This was followed on June 5, 2006, by the election of a Principal Chief and Assistant Principal Chief, Osage Nation Congress, and Osage Minerals Council. At the request of the Nation, the BIA provided technical assistance in conducting the election in accordance with Public Law 108-431, 118 Stat. 2609. With the elections completed, all elected officials were sworn into their respective offices on July 3, 2006. Upon the swearing in of these elected officials, governmental authority passed from the Osage

Tribal Council to the Osage Nation Constitutional Government. Thereafter, the Osage Tribe of Indians of Oklahoma became the Osage Nation.

In 2008, the BIA formally acknowledged the name change of the Tribe from the Osage Tribe of Indians of Oklahoma to the Osage Nation and published the change in the Federal Register in the list of Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs. (See, 73 FR 18553, April 4, 2008). Further communication between the Nation and the BIA eventually resulted in an agreement to begin an informal negotiated rulemaking process. In February 2010, representatives from the Osage Nation, the BIA Eastern Oklahoma Region, Osage Agency, the BIA Eastern Oklahoma Region, Eastern Oklahoma Regional Office, the Tulsa Field Solicitor's Office, and the BIA Central Office convened to form a joint regulation negotiation team. The team completed new and revised regulations to cover 25 CFR parts 90, 91, 117, and 158. The June 2010 Election resulted in a change of administration of the Osage Nation, thereby, starting the process over again with a new vision from Osage Nation. The Osage Nation formed a new team in 2019 and they have reviewed and revised regulations to cover 25 CFR part 90. The team will continue working on parts 91, 117, and 158.

### **III. Overview of Rule**

This rule governs BIA's role in providing information to the Osage Minerals Council Election Board for purposes of notice. The existing 25 CFR part 90 is the authority for the release of otherwise potentially confidential information to the Osage Minerals Council Election Board. The alternative to these amendments would deprive the Osage Nation of the information it needs to accurately identify Osage voters. Amendments to this part focus on the BIA's procedures in compiling a complete annuitant list with addresses and headright interests to the Osage Minerals Council Election Board for purposes of identifying Osage voters.

This rule deletes most provisions of part 90 in their entirety because of the enactment of the Public Law 108-431, 118 Stat. 2609, and subsequent adoption of the Constitution of the Osage Nation. Thus, the remaining purpose of this part is the authority for BIA to provide a list to the Osage Minerals Council Election Board of eligible headright interest owners in the manner requested by the Osage Nation. The Department may not generally release this information but this part provides authority for the release solely to the Osage Minerals Council Election Board for purposes of conducting elections for the Osage Minerals Council. The Privacy Act does not prohibit disclosure of the headright interests of eligible Osage voters for this purpose. The Department may provide the list of eligible headright interest owners as a routine use under the Privacy Act.

In response to the Constitution of the Osage Nation, the BIA significantly reduced its role in the elections of the Osage Nation as of June 2006. The only remaining portion in part 90 describes the current role of the BIA in the Osage Minerals Council election process.

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 90 is located in the new 25 CFR part 90.

| <b>Current 25 CFR §</b> | <b>New 25 CFR §</b> | <b>Title</b>   | <b>Description of Change</b>                                  |
|-------------------------|---------------------|--|---|
| N/A                     | 90.100              | What role does BIA play in the Osage Minerals Council elections? | Consolidated current §§ 90.21 and 90.35 into one new section. |
| 90.1                    | N/A                 | General, Definitions.  | Deleted.  |
| 90.2                    | N/A                 | General, Statutory provisions.                                   | Deleted.  |
| 90.21                   | N/A                 | Eligibility, General   | Revised and incorporated into the new § 90.100.               |
| 90.30                   | N/A                 | Elections, Nominating conventions and petitions.                 | Deleted.  |
| 90.31                   | N/A                 | Elections, Applicability.  | Deleted.  |
| 90.32                   | N/A                 | Elections, Election Board.                                       | Deleted.  |
| 90.33                   | N/A                 | Elections, Watchers and challengers.                             | Deleted.  |
| 90.34                   | N/A                 | None (Apparently omitted)  |   |
| 90.35                   | N/A                 | Elections, List of voters.                                       | Revised and redesignated as § 90.100 (see first row).         |

| <b>Current 25 CFR §</b> | <b>New 25 CFR §</b> | <b>Title</b>  | <b>Description of Change</b> |
|-------------------------|---------------------|---|------------------------------|
| 90.36                   | N/A                 | Elections, Disputes on eligibility of voters.           | Deleted.                     |
| 90.37                   | N/A                 | Elections, Election Notices                             | Deleted.                     |
| 90.38                   | N/A                 | Elections, Opening and closing of poll.                 | Deleted.                     |
| 90.39                   | N/A                 | Elections, Voters to announce name and residence.       | Deleted.                     |
| 90.40                   | N/A                 | Elections, Ballots.                                     | Deleted.                     |
| 90.41                   | N/A                 | Elections, Absentee voting.                             | Deleted.                     |
| 90.42                   | N/A                 | Elections, Absentee ballots.                            | Deleted.                     |
| 90.43                   | N/A                 | Elections, Canvass of election returns.                 | Deleted.                     |
| 90.44                   | N/A                 | Elections, Statement of supervisor.                     | Deleted.                     |
| 90.46                   | N/A                 | Elections, Notification of election of tribal officers. | Deleted.                     |
| 90.47                   | N/A                 | Elections, Contesting elections.                        | Deleted.                     |
| 90.48                   | N/A                 | Elections, Notice of Contest.                           | Deleted.                     |
| 90.49                   | N/A                 | Elections, Expenses of elections.                       | Deleted.                     |

#### **IV. Changes from Proposed Rule to Final Rule**

On December 4, 2020 (85 FR 78300), the BIA published a proposed rule to update Federal regulations related specifically to the Osage Nation so that the regulations align with the Osage Nation’s new form of government and address outdated regulations. The proposed rule was developed through a consensus-oriented process conducted between the BIA and the Osage Nation.

During the public comment period on the proposed rule, the BIA received two comments: one from an individual in support of the rule, the other from the Osage Minerals Council expressing general support for the proposed rule but requesting a change in the nomenclature of the titles and entities that conduct the elections to reflect the sovereign authority of the Osage Nation and the Osage Minerals Council to change that nomenclature. Specifically, the Osage Minerals Council requested that “supervisor of the Osage Minerals Council Election Board” be changed to the “Osage Minerals

Council’s designee charged with carrying out Osage Minerals Council elections.” The final rule makes this change.

The Osage Nation also requested clarification that the list of names the Osage Agency Superintendent provides be based on the quarterly annuity roll at the Osage Agency as of the last quarterly payment “of the last full quarter” immediately preceding the date of the election. To clarify which quarterly annuity roll is intended as the basis for the list, the final rule specifies that it will be the March quarterly annuity payment. Elections are held in June so the voters list would reflect the March annuity payment. This revision avoids the potential for misinterpretation of which quarter’s annuity roll is intended.

## **V. Procedural Requirements**

### **A. Regulatory Planning and Review (E.O. 12866, 13563, and 13771)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### **B. The Regulatory Flexibility Act**

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**C. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this rule is exclusively confined to the Federal Government, Osage Indians, and the Osage Nation, this rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**D. Unfunded Mandates Reform Act of 1995**

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

**E. Takings (E.O. 12630)**

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

**F. Federalism (E.O. 13132)**

Under the criteria in section 1 of Executive Order 13132, this rule does not have



sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

#### **G. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **H. Consultation with Indian Tribes (E.O. 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with federally recognized Indian Tribes through a commitment to consultation with these Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has substantial direct effects on one federally recognized Indian Tribe because the rule directly addresses the Osage Nation. The Department consulted with the Osage Nation on this rule. This rulemaking is a result of a consensus-oriented process conducted between the Department of the Interior and the Osage Nation to identify a rulemaking strategy to address issues and concerns contained in the regulations related specifically to the Osage Nation, which no longer align with the Nation's form of government. The purpose of this rulemaking is to allow the Department of the Interior to better meet its fiduciary trust responsibilities and to carry out the policies established by the Congress to strengthen Tribal sovereignty with regard to elections of Osage Nation officers.

#### **I. Paperwork Reduction Act**

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of

1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **J. National Environmental Policy Act**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **K. Effects on the Energy Supply (E.O. 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **List of Subjects in 25 CFR Part 90**

Elections, Indians—tribal government.

For the reasons given in the preamble, the Department of the Interior revises 25 CFR part 90 to read as follows:

#### **PART 90 – ELECTIONS OF OSAGE MINERALS COUNCIL**

Sec.

90.100 What role does the Bureau of Indian Affairs (BIA) play in the Osage Minerals Council's elections?

90.101 [Reserved]

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9; Sec. 9, Pub. L. 59-321, 34 Stat. 539; Pub. L. 108-431, 118 Stat. 2609, 118 Stat. 2609.

**§ 90.100 What role does the Bureau of India Affairs (BIA) play in the Osage Minerals Council's elections?**

(a) The Superintendent of the Osage Agency must compile, at the request of the Chair of the Osage Minerals Council, a list of the voters of Osage descent who will be 18 years of age or over on the election day designated by the Osage Minerals Council and whose names appear on the March quarterly annuity roll at the Osage Agency as of the March quarterly payment immediately preceding the date of the election. Such list must set forth only the name and last known address of each voter.

(b) For purposes of calculating votes, the Superintendent must furnish to the Osage Minerals Council designee charged with carrying out Osage Minerals Council elections a separate list containing the name and last known address of each eligible voter and including the voter's headright interest shown on the last March quarterly annuity roll.

**§ 90.101 [Reserved]**

*Bryan Newland,*  
**Assistant Secretary – Indian Affairs.**

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